

Patent
Attorney's Docket No. 033136-119

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)

Richard G. Miller et al.)

Group Art Unit: 1644

Application No.: 09/541,033)

Examiner: Jessica H. Roark

Filed: March 31, 2000)

Confirmation No.: 3667

For: METHOD FOR TREATING)
AUTOIMMUNE AND ALLOIMMUNE)
DISEASES)

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TECH CENTER 1600/2900

COMMUNICATION TRANSMITTAL LETTER

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

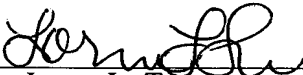
Enclosed is a Communication for the above-identified patent application.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

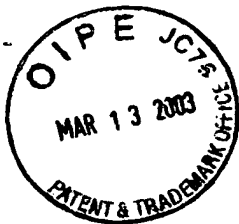
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Date: March 12, 2003



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Sir:

The undersigned wishes to thank Examiner Roark for the courtesies extended during the telephonic interview conducted on March 11, 2003 for this application with Gerald F. Swiss (Reg. No. 30,113).

During that telephonic interview, the rejection of Claims 1-11 under 35 U.S.C. §103(a) as allegedly being unpatentable over Bolton (U.S. Patent 5,980,954) in view of Jacobs (U.S. Patent 5,605,690) was discussed. Specifically, the issue was raised whether the rejection over the Bolton patent should have been raised under 35 U.S.C. § 103(c) due to a possible obligation by the inventors of the instant application to assign to Vasogen Ireland Limited. Applicants and the Examiner agreed that notwithstanding the common obligation to assign at the time the invention was made, the parent¹ of the Bolton patent, U.S. Patent 5,591,457² would not qualify as prior art under 35 U.S.C. §102(e), (g), or (h) and thus 35 U.S.C. § 103(c) would not apply.


¹U.S. Patent 5,980,954 is a continuation in part of U.S. Application 08/352,802, which issued as U.S. Patent 5,591,457 on January 7, 1997.

²Kindly note that the '457 patent discloses the treatment of rheumatoid arthritis.

As such, Applicants and the Examiner agreed that the rejection should be reissued with the appropriate art rejection.

Respectfully submitted,

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Lorna L. Tanner
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Attorney of Record

Date: March 11, 2003